

DIVISION OF SPECIAL EDUCATION

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State Advisory Council on the Education of Children With Disabilities

**Holiday Inn Select, North**

**Indianapolis, Indiana**

**December 7, 2001**

**Members present:** Carolyn Heier, Julie Swaim, Elaine Scaife, Gary Bates, Brett Bollinger, J. Bret Lewis, Rose Black, Terry Huser, John Viernes, Jackie Pitman, Carole Stein, and Cathlene Hardy-Hansen

**Staff present:** Bob Marra, Paul Ash, Brenda Alyea, Joe Bear, Sheron Cochran, Constance Rahe, and Demaris Stewart

**Guests:** John Nally, Denise Arland, Susan Kontos, Amy Cook Lurvey, Rich Burden, Ann Alley, Jan Bledsoe, Julie Wickham, Paula Anderson, Kevin Russell, Anna Dusick, Gary Collings, and Carolyn Coston

Vice chairperson Julie Swaim called the meeting to order at 9:10 a.m. The minutes from the August 10, 2001, meeting were provided to members for review. Julie moved to approve the minutes as written. The motion was seconded by Cathlene Hardy-Hansen. No discussion ensued. The minutes were unanimously approved as written.

**Article 7**

Bob Marra advised the council members that on November 29, 2001, he had gone before the Indiana State Board of Education to discuss the Division's request for authorization to publish notice of intent to adopt a rule to make needed changes in Article 7. Bob stated he had signed an assurance statement for the U.S. Department of Education, Office of Special Education Programs ("OSEP") that Indiana would make necessary changes to Article 7 in order to comply with the federal IDEA regulations. Based on the assurance statement that the required changes would be made by the Division and in effect no later than July 1, 2002, federal funding was awarded for July 1, 2001 through June 30, 2002. Continued funding for the next year is contingent upon the State Board of Education's adoption of the revisions to Article 7 to be effective no later than July 1, 2002.

Bob reported that there are three areas of Article 7 that will require major changes:

1. Mediation agreements: Currently not all case conference participants are required to attend a mediation session, and the resulting agreement must be approved by the case conference

committee. OSEP has advised that any agreement reached in a mediation session is binding and cannot be subject to approval by the case conference committee.

Bret Lewis offered the possibility of agreeing at mediation and having a binding agreement, but requesting a new case conference to address the same issues the next day if someone disagrees with the mediation conclusions. He indicated his position that it is not mediation if it is binding and of the potential for taking mediation to a higher level, causing attorneys to be involved

Cathlene Hardy-Hansen thought the beauty of mediation is a support person on both sides; if an attorney is present it adds a different slant.

Jackie Pitman questioned whether Indiana could opt not to have a mediation program.

Bret Lewis indicated his preference for keeping the program as it is currently operated.

Bob indicated it is not an option to say Indiana won't offer mediation. OSEP wants to make decisions binding without the presence of the case conference committee. There would be no requirement to reconvene a case conference committee. Bob reminded the group that this is OSEP's interpretation and that Indiana would have to comply.

Brett Bollinger indicated that we continue to do what we said we would be doing in mediation and that the program could continue to be "sold" this way.

2. Due process hearings: Article 7 limits due process hearings to a "current case or controversy." OSEP indicated this limitation should be removed, to allow for claims related to prior placements, identification, evaluations, or failure to provide a free appropriate public education.

Bob said changes in Article 7 must be made; if they're not made, OSEP will not approve the eligibility document. He also explained that he and Becky Bowman will participate in a conference call with OSEP on December 12 to resolve the remaining issues. Bob also shared the State Board of Education has the authority to say yes or no. The final changes to Article 7 are to be reviewed by the State Board of Education at its March meeting. Any changes made to the proposed revisions will be discussed with the Advisory Council, and Bob asked whether it should be via meeting, conference call, or e-mail.

Rose Black moved that the Advisory Council meet on March 1, 2002, to discuss the changes prior to the March presentation to the State Board of Education. Terry Huser seconded the motion. The motion passed.

Bob asked Carolyn Coston what some of the other states have done as far as conducting hearings. Carolyn indicated that she was not aware of any similar circumstances in any of the surrounding states.

Terry Huser asked what outcomes the Division was looking for. Julie Swaim suggested that it might include a student who didn't get "the basics," is now in the 12th grade, and wants compensation for the lack of appropriate services. Terry questioned whether monetary damages

could be awarded. Bob responded that compensatory damages were possible. John Viernes added that compensatory damages were also available in Connecticut.

3. Reviews by the Board of Special Education Appeals: Article 7 requires the Board of Special Education Appeals to conduct its review pursuant to the standards of IC 4-21.5-3. OSEP has determined that these standards may impede the Board's ability to make an independent decision. Bob said there had been some discussion about appeals to retry cases, but he said OSEP is strongly opposed to this.

Terry Huser inquired about the nature of OSEP's concern. Bob indicated it was a legal issue and that he would be better able to respond after talking with Becky Bowman and OSEP.

Bob went over other changes to be made to Article 7, including the following (changes are delineated in quotation marks):

511 IAC 7-18-3(d)

Adding at the beginning of the sentence: If a "non-educational public agency"

511 IAC 7-19-1(b)

Adding a sentence at the beginning of the subsection: "The activities undertaken to carry out child find responsibilities for private school students with disabilities must be comparable activities undertaken for students with disabilities in public schools."

511 IAC 7-19-1(b)(3)

Adding at the end of the sentence: "who is participating in any program assisted or carried out under this Article."

511 IAC 7-19-3(m)(1)

Adding at the end of the sentence: "or otherwise benefit the private school."

511 IAC 7-19-2(d)

Adding in two places the phrase: the hearing officer "or the court"

511 IAC 7-19-2(d)(3)

Adding the words: its intent to evaluate the student, "including a statement of the purpose of the evaluation that was appropriate and reasonable"

511 IAC 7-22-1(e)(13)(B):

Adding the words: the student's "placement," special education, "and related" services

511 IAC 7-23-2(d)

Adding to the first sentence: "the public agency shall inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR 300.568." Adding a second sentence: "The public agency shall conduct a hearing upon the parent's request. "

511 IAC 7-25-3(j)

Adding the words: including information provided by the parent, "aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior"

511 IAC 7-25-4(b)

Replacing the first sentence with the following: "Informed parental consent must be obtained prior to conducting an initial educational evaluation."

511 IAC 7-25-5(c)

Adding to the first sentence: request for an independent educational evaluation, "or upon the parent's request for reimbursement for an independent educational evaluation obtained at the

parent's expense"

511 IAC 7-25-5(f)

Replacing the first part of the sentence with the following: "In a hearing on the issue of the public agency's reimbursement of the parent's expense of an independent educational evaluation,"

Adding to the end of the sentence: "unless applying those criteria would deny a parent's right to any independent educational evaluation as identified in 34CFR 300.502 (e)."

511 IAC 7-25-6(h)

Adding a sentence at the end: "The public agency shall also conduct a reevaluation upon the request of the parent or a teacher in accordance with the requirements of 511 IAC 7-25-6(b)."

511 IAC 7-25-7(b)

Adding to the first sentence: or public agency, "including a teacher"

Adding a second sentence: "An additional evaluation shall be conducted upon request or when conditions warrant such an evaluation."

511 IAC 7-27-4(c)(8)

Adding item #8: "Any lack of expected progress toward the annual goals described in 511 IAC 7-27-6 (a)(2), and in the general curriculum, if appropriate."

511 IAC 7-27-5(c)

Adding as the first sentence: "The public agency shall provide the parent with a copy of the written report."

511 IAC 7-27-7(c)(1)

Ending the first sentence after the word "received." Revising the second sentence to state: "However, if" that date falls within the last twenty (20) instructional days of "the end of" the spring semester "and the individualized education program does not require extended school year services to be provided during the summer," the services need not be provided until the first day of the following semester.

511 IAC 7-27-9(a)(1)

Adding the words: including those "students placed in public or private institutions by the public agency outside the public agency's jurisdiction and those students"

511 IAC 7-29-9(a)(2)

Deleting: "to special classes or separate facilities"

511 IAC 7-29-2(a)(3)

Replacing: a student with disabilities is educated with "the student's placement is as close as possible to the student's home school and is"

511 IAC 7-27-12(a)

Adding two sentences at the beginning: "Before a public agency places a student with a disability in or refers a student to a private school or facility, the public agency shall convene a case conference committee and develop an individualized education program for the student in accordance with 511 IAC 7-27-4(c) and 511 IAC 7-27-6. In accordance with IAC 7-27-3(e)(6), the public agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls, if the representative cannot attend in person."

511 IAC 7-27-12(m)

Adding the words: provider of services, "the state educational agency"

511 IAC 7-27-12(m)(7)

Adding item #7: "That the public agency disseminates a copy of Article 7 and the Procedural Manual for Community Supported and Residential Services to each private school or facility to

which the public agency has referred or placed a student with a disability."

511 IAC 7-28-3(a)

Adding: student's transition service needs "under the applicable components of the student's individualized education program"

511 IAC 7-28-3(b)

Adding the words: whichever comes first, "or earlier if determined appropriate by the case conference committee,"

511 IAC 7-29-5(a)

Adding: expelling the student, "or otherwise commencing a removal that constitutes a change of placement"

511 IAC 7-29-8(c)(1)

Adding to the end of the sentence: "and provided notice to the student's parents of this determination consistent with 511 IAC 7-22-2.

511 IAC 7-29-8(e)

Adding to the first sentence: subjected to "suspension," expulsion, "or placement in an interim alternative educational setting"

511 IAC 7-30-1(i)

Adding item "i": "The public agency may establish procedures to require parents who elect to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who:

(1) is under contract with a parent training and information center or an appropriate alternative dispute resolution entity; and

(2) would explain the benefits of the mediation process; encourage the parents to use the process. Such procedures must be approved by the division of special education prior to implementation by the public agency, and the public agency may not use these procedures to deny or delay a parent's right to a due process hearing if the parent fails to participate in the meeting. The division of special education shall bear the cost of the meeting in accordance with the written procedures."

511 IAC 7-30-3(f)

Ending the first sentence after "resolution." Adding to the beginning of the second sentence: "The public agency shall inform the parent" Adding two conditions under which information must be provided: "(1) the parent requests the information; or (2) the parent or the public agency initiates a hearing under this section."

511 IAC 7-30-4(s)

Adding item "s": "If, as a result of the board's review, the board's decision concurs with the parent's contention that a change of placement is appropriate, the placement ordered by the board shall be treated as a placement agreement upon by parent and the State or local public agency. "

### **Special Education Cooperatives**

Bob advised the Council on his work with the Interim Study Committee on Education Issues and that he had committed to doing a study on special education cooperatives. The results of the study are to be submitted in May 2002, including recommendations for the structure of special education cooperatives.

Bob reported he recently met with representatives from the East Central Special Services District. Fayette County School Corporation has given notice to East Central that it plans to leave

the cooperative in 18 months. Rush County Schools' superintendent has also indicated the possibility of withdrawing from East Central and joining the New Castle cooperative. The remaining four school corporations may continue to operate as the East Central Special Services District. Council members questioned the financial feasibility of this type of reorganization.

### **Charter Schools**

Bob shared information on charter schools. Charter schools approved by the mayor of Indianapolis are considered the same as other LEAs or public agencies and are sometimes called "non-conversion" schools. These charter schools are not considered part of another school corporation. Charter schools cannot deny admission based on a student's disability. The Mayor is very committed to providing services to students with disabilities who attend a charter school, and the Mayor's charter school staff has been working closely with the Division to ensure that the charter schools comply with all requirements. Charter schools will be required to submit a comprehensive plan that must be approved before they open. The advisory council will review any plan submitted. The mayor's charter school staff is considering the possibility of requiring the charter schools to form a cooperative to provide special education services. Bret Lewis offered, on behalf of public schools, that public schools want a "level playing field" and want charter school held accountable in the same manner as other public schools.

Bob indicated that Indianapolis Public Schools is discussing the possibility of a charter school using IPS resources. An individual IPS school converting to a charter school under an agreement with IPS would require changing IPS' comprehensive plan, which must be presented to DOE for approval.

Bob also reported that all charter schools are required to use licensed teachers. A discussion of licensed teachers ensued. Gary Collings described some new rules proposed by the Professional Standards Board that are designed to increase the availability of licensed teachers through a "transition to teaching program."

Bob indicated that some charter schools have hired an outside (for-profit) education management organization to work with them in developing and operating the charter school. John Viernes questioned how this would work. Bob responded that they can bring in anyone they want, but anyone providing services to students must be appropriately licensed or certified according to Indiana's requirements.

Bob said that Adjusted Pupil Count (APC) funds would go to charter schools after the December 1, 2002, child count. Part B funds will be advanced to the charter schools in August 2002. Charter schools will be required to comply with the requirements of Article 7.

Brett Lewis asked if complaints and requests for hearings regarding charter school students would still come to the Division. Bob responded that the Division is responsible for complaints and hearings regarding charter school students.

Carolyn Coston offered that Michigan has "quite a few " charter schools and Ohio currently has over one hundred.

### **Continuous Improvement Monitoring**

Bob reviewed the development of the Continuous Improvement Monitoring (CIM) Self Assessment Report. The State Self-Assessment Report is divided into four cluster areas that are divided into twenty components. The original 186 performance indicators identified by OSEP that make up the components have been consolidated into 92 performance indicators in Indiana's CIM process.

The Division wants to ensure a quality product/report. The preliminary report is due to OSEP by December 21, 2001. Council members were shown a draft form for their use in providing feedback on the State Self-Assessment Report. Members agreed that a meeting on January 11, 2002, was needed to review feedback responses and the report.

Bob indicated that he believed the Division would require additional time to submit its final self-assessment report to OSEP in order to ensure an accurate and quality product. Carolyn Coston concurred that OSEP is interested in a quality document and would likely not be opposed to a brief extension.

Paul Ash reviewed one of the cluster areas entitled "General Supervision," to demonstrate how to work through one of its components. Council members offered various comments and suggestions during Paul's review and explanation.

Council members expressed appreciation for the work that staff had done on the CIM and the State Self-Assessment Report. Members of the advisory council and the state self-assessment steering committee determined that any additional information regarding the self-assessment report should be transmitted to them via e-mail. Members were advised to ensure that the Division had a correct e-mail address.

The council recessed for lunch, and reconvened with members of the self-assessment steering committee and members of the Interagency Coordinating Council (ICC)

Bob began the second half of the meeting with introductions of advisory council, steering committee, and ICC members. After acknowledging the monumental task presented to the councils and the steering committee, he reiterated the recommendations from the morning meeting that members should review the draft self-assessment report and provide feedback on the form provided. The results of the feedback provided by members will be discussed at the advisory council meeting scheduled for January 11, 2002. Susan Kontos questioned the ability to continue discussions on January 11, when the report is due to OSEP on December 21. Bob advised that he would be conferring with OSEP about extending the deadline for the final report in order to ensure submission of a quality report. Amy Cook Lurvey inquired whether the "Performance Levels" were intentionally left blank in the members' copies of the report, and Bob responded that these levels have not yet been determined, pending further review and discussion. Amy agreed. The January 11 joint meeting of the advisory council and steering committee will center on the members' feedback and recommendations, including recommendations regarding performance levels.

Jackie Pitman moved to have the Division create some type of evaluation format for the Part B portion of the self-assessment report. Brett Bollinger seconded the motion.

### **Part C**

Kevin Russell of the Division of Family and Children provided introductions. Denise Arland, chair of the ICC, reported that she had been in contact with OSEP. Part C will be working with newly developed CIM process called "Cluster Light." Denise also advised that the current version of the self-assessment report for Part C is merely a reformatted version of the previous week's report, but that additional information will be added.

The meeting was adjourned at 2:45 p.m.